

1 cases where the --

2 JUDGE CHACHKIN: Well, the Bureau --

3 MR. TOPEL: -- where the Commission cites that, that
4 these facts were disclosed to the Commission and we therefore
5 don't believe that the violation was intentional and some --
6 no penalty or some penalty less than a disqualification is
7 imposed.

8 JUDGE CHACHKIN: As far as I know, the Commission
9 has not put any issues in the case -- has not claimed that the
10 mere fact that she was an employee violates any rule.

11 MR. TOPEL: It's one of the -- yes, it's one of the
12 indicia, that she was --

13 JUDGE CHACHKIN: Did the Commission say per se the
14 mere fact that she was an employee at TBN is in violation of
15 the Commission's rules?

16 MR. COHEN: They don't say anything about that at
17 all.

18 MR. TOPEL: But they say that TBN retains control of
19 NMTV's board by virtue of the conduct of two NMTV employees.
20 Her position and conduct on the NMTV board is integrally
21 related to her role at TBN. The Commission was told her role
22 at TBN. I mean, that --

23 MR. SCHONMAN: Well, Your Honor, that's -- I think
24 that he makes a good point, that we're talking about the
25 conduct of the, of the players in this case and whether or not

1 she was disclosed is, is just not an issue. It's the conduct
2 of the principals of the corporations which we have to examine
3 and examine very closely here.

4 MR. TOPEL: Well, Your Honor, and the intent of the
5 conduct.

6 JUDGE CHACHKIN: How many of these paragraphs deal
7 with the statement -- that she was employed? I don't see how
8 this is bearing on the issues at all.

9 MR. TOPEL: Primarily, paragraph 15 and then, and
10 then at the end of the exhibit there's a reference back to, to
11 the preceding evidence that shows the items that were
12 disclosed to the Commission.

13 MR. COHEN: Sixteen also deals with, with the same
14 subject matter, Your Honor, because there NMTV is urging they
15 should get credit for the fact that they filed their bylaws
16 and other organizational documents. The same principle, I
17 think.

18 JUDGE CHACHKIN: Your -- you object to 15 and 16?

19 MR. SCHONMAN: Correct.

20 JUDGE CHACHKIN: The objection is sustained. Any
21 other objection? Let's proceed --

22 MR. COHEN: Did you want to the Bureau to catch up,
23 Your Honor? Mr. Schonman said he had objections and I wasn't
24 aware of that.

25 JUDGE CHACHKIN: Well, let's, let's do that and then

1 we could continue on with objections on each paragraph.

2 MR. TOPEL: Your Honor, while Mr. Schonman is, is
3 counting up, could I speak to paragraph 16 which, which you
4 ruled on and I didn't have a chance to speak to which was the,
5 the issue of the bylaws, the fact that the bylaws were
6 reported to the Commission?

7 JUDGE CHACHKIN: What about it?

8 MR. TOPEL: Well, the -- one of the bills in
9 particular in the designation order is that --

10 JUDGE CHACHKIN: It sounds to me like, it sounds to
11 me like you're putting the Commission up -- the Commission is
12 on trial --

13 MR. TOPEL: No, no, Your Honor, the witness --
14 no --

15 JUDGE CHACHKIN: -- for not, for not, for not being
16 able to detect the fact that there might be an impropriety.

17 MR. TOPEL: No, Your Honor.

18 JUDGE CHACHKIN: That's what you sound to me like
19 you're trying to do here.

20 MR. TOPEL: No, Your Honor. Your Honor, what, what
21 we're trying to establish that is the witnesses --

22 JUDGE CHACHKIN: -- the Commission for a judgment at
23 that point whether it was proper or not for her to be -- are
24 you saying every time --

25 MR. TOPEL: No, Your Honor --

1 JUDGE CHACHKIN: -- everytime somebody files
2 something with the Commission, if the Commission doesn't
3 question it therefore it's proper? Is that your
4 representation?

5 MR. TOPEL: No, Your Honor, no, Your Honor. What I
6 am trying to establish is the witnesses that we're going to
7 put on the witness stand and you're going to see who we
8 believe are the most innocent, honest people on the face of
9 the earth who --

10 JUDGE CHACHKIN: There's no jury here. There's no
11 need for this.

12 MR. TOPEL: Well, well, what, what I am -- Your
13 Honor, these, these people are entitled to testify that we
14 were not intending to hide anything or to, or to trick the
15 Commission. If there was something wrong it was, it was
16 innocent. There were rules that weren't clear, if there were
17 rules. I mean, I'll tell you, our initial position is that
18 we've done exactly, exactly in accordance with the
19 Commission's rules. But if the Commission, if the Commission
20 in its -- if one of the bills of particular is that Dr. Crouch
21 has this position for NMTV which gives him this authority over
22 the company. Mrs. Duff and Dr. Crouch are entitled to say if
23 that's wrong, we didn't understand it was wrong. We had filed
24 the information, we weren't trying to hide it and that, that
25 is probative of, of a lack of intent to deceive the Commission

1 | which is relevant to this case.

2 | JUDGE CHACHKIN: What did you tell the Commission?
3 | Did you tell the Commission these allegations and you're
4 | saying that -- all, all these allegations, you're saying that
5 | you divulged to the Commission these facts set forth in these
6 | allegations?

7 | MR. TOPEL: Most of them, the answer to that is yes,
8 | Your Honor. Not 100 percent, but most of them. But, but, but
9 | the point is, because I don't want to as you say put, put the
10 | Commission on trial, the witnesses are entitled to testify
11 | that our intent was to comply, we were not trying to be
12 | dishonest. You should not take our license away because these
13 | kinds of -- if these are mistakes, you should not take our
14 | license away because they occurred, we will, we will fix them,
15 | we're contrite and we disclosed. And I think the -- Mrs.
16 | Duff's testimony that she understood that this information had
17 | been filed with the Commission, so she thought it was proper
18 | for Dr. Crouch to be the president and the director and do
19 | what he did as president and director legitimately goes to her
20 | state of mind and, and her intent.

21 | MR. COHEN: Your Honor, could I make a comment.
22 | Mr., Mr. Topel at least six times has referred to a bill of
23 | particulars. Now, I don't know where -- if this is part of
24 | strategy, but to my knowledge there hasn't been any bill of
25 | particulars in this proceeding. In revocation proceedings I

1 know there are bills of particulars sometimes. But there's
2 been no bill of particulars here, and I don't know what, what,
3 what, what he's talking about when he talks about a bill of
4 particulars.

5 MR. TOPEL: Well, Your Honor, let me say there's no
6 strategy --

7 MR. COHEN: We have a designation, we have a
8 designation order in this proceeding like in any other renewal
9 proceeding and the designation order is what it is. And I
10 know of no requirement that the Commission issue a bill of
11 particulars in a renewal application.

12 MR. TOPEL: Your Honor, if I may speak to that
13 again? There is no strategy or anything intended, and I'm not
14 -- I'm starting to not appreciate those kinds of suggestions
15 for whatever that's worth. There's no strategy. By bill of
16 particulars, what I'm meaning is we have to deal with the
17 items that seemed to trouble the Commission in its designation
18 order and we've done our best to deal with that. One of those
19 items is that Dr. Crouch has certain authority as president.
20 Our position is we -- that is true, but we were proceeding in
21 good faith, it was something that was on file with the
22 Commission. We didn't have a guilty state of mind, we weren't
23 trying to violate the rules, that's relevant to if you find de
24 facto control whether you take a license away or impose a
25 lesser sanction.

1 JUDGE CHACHKIN: Well, I've made my ruling, I've
2 rejected that paragraph. You have no further objections?

3 MR. SCHONMAN: Yes, on page 4, paragraph C. Three
4 lines down, the sentence that, that starts, "Thus, as a result
5 of NMTV's efforts," it's that clause that the Bureau objects
6 to on the basis that it's conclusory in nature. I think the
7 question in this case is, is whose efforts got a particular
8 station on the air, and the question whether it was TBN's or
9 NMTV's efforts. So, I would move to strike that clause.

10 JUDGE CHACHKIN: The objection is sustained.

11 MR. TOPEL: So, what, what clause are we striking
12 and what's staying in? So, "An unbuilt station was placed in
13 service" stays in?

14 MR. SCHONMAN: Right, that, that would be the, the
15 text of the sentence.

16 MR. COHEN: Could you read what you're striking,
17 Your Honor?

18 JUDGE CHACHKIN: What I'm striking is, "Thus, as a
19 result of NMTV's efforts."

20 MR. TOPEL: I think "Thus" stays in so it reads,
21 "Thus, an unbuilt station was placed in service." Is --
22 I'm --

23 MR. SCHONMAN: That's fine with the Bureau.

24 JUDGE CHACHKIN: All right. "An unbuilt station was
25 placed in service," yes, that's a fact. Whose efforts it were

1 will have to be established by, by facts here.

2 MR. SCHONMAN: My next objection is on page 11,
3 paragraph 11, and there's a rather long sentence which starts
4 four lines down from the top of that paragraph. The sentence
5 begins, "As shown at Tab F," and if you read down several
6 lines there is a reference -- well, there is -- there are two
7 words the Bureau objects to, the words "Like NMTV," and my
8 objection is that --

9 JUDGE CHACHKIN: Where is this now? Oh, I see, I
10 see, yeah.

11 MR. SCHONMAN: The word, the words "Like NMTV,"
12 those two words. I'm not sure how those are used, but it
13 appears to suggest that NMTV -- that, that Mrs. Duff is making
14 the conclusion that NMTV was entitled to a minority preference
15 and I think that's -- well, the -- one of the issues here.

16 MR. TOPEL: "Like NMTV" refers to nonstock
17 corporation.

18 MR. SCHONMAN: If that's the case, and if that's all
19 --

20 JUDGE CHACHKIN: Well, I will strike "Like NMTV."
21 If all we're referring to -- a general situation -- we don't
22 need "Like NMTV," that conclusion -- be reached.

23 MR. SCHONMAN: Thank you, Your Honor. Now we're up
24 to -- I have no other objections up to, up to the point where
25 Mr. Cohen was.

1 JUDGE CHACHKIN: All right. Mr., Cohen, where,
2 where are you now?

3 MR. COHEN: Are you going to take an afternoon
4 recess, Your Honor?

5 JUDGE CHACHKIN: Yeah, we'll take it in 10, 15
6 minutes.

7 MR. COHEN: Paragraph 17, Your Honor.

8 JUDGE CHACHKIN: All right. Paragraph -- if someone
9 has an objection on prior paragraphs they should indicate it
10 now or else we're proceeding to paragraph 17. All right.
11 What's paragraph 17 --

12 MR. COHEN: If you read paragraph 17, Your Honor,
13 it's, it's clear that the reference to the article in the "Los
14 Angeles Times," is coming in not for the witness's state of
15 mind, but it's coming in to show the truth of the matter
16 asserted. Plus, I submit to you that this is irrelevant. But
17 in any event, you -- if you disagree with me on the relevance,
18 then my other point is the one I've just made.

19 MR. TOPEL: Your Honor, it is offered strictly for
20 state of mind that the witness saw this report, saw the
21 references in the article. That caused her to believe that
22 she was -- that her continuing to work at TBN in the capacity
23 that she was and being a director of NMTV was proper. Whether
24 she was right or wrong of course is, is what you're going to
25 decide, but this, this testifies to her state of mind at the

1 time, at the time she read that article and continuing onward.

2 MR. SCHONMAN: Your Honor, the Bureau objects for
3 the same reasons that Mr. Cohen has expressed. However, if
4 this paragraph does come in for state of mind purposes only,
5 then the Bureau would have no objection to it.

6 JUDGE CHACHKIN: Paragraph is -- solely for state of
7 mind purposes. Next objection?

8 MR. COHEN: Yes, paragraph 18. Again, Your Honor,
9 if you read that, this is the, the self-serving conclusions.
10 "I know that I have not intentionally violated any FCC
11 requirement and I'm unaware of any other NMTV director who has
12 done so." Insofar as her -- whether she did it or not, that's
13 something that you're going to have to decide and she
14 certainly isn't competent to testify about whether any other
15 NMTV director has done or not done. And then she goes on, "If
16 I've acted improperly I want to apologize to the FCC and ask
17 that the FCC tell me what I must do to correct the error." I
18 find this to be astonishing type of testimony. This is in
19 effect here she's asking the Commission to, to instruct her as
20 to what she did wrong. That's absolutely irrelevant. Now, I
21 know Mr. Topel's theory because he's, he's enunciated it
22 eloquently as to why this is in here. But that doesn't make
23 it proper testimony and it's not proper -- you could never
24 write a finding on this, Your Honor. This is not factual
25 testimony and it ought to be not received.

1 MR. TOPEL: Your Honor, the witness has to be
2 entitled to testify to her intent. That's the starting point
3 of the examination of intent. I'm sure Mr. Cohen wouldn't
4 object if she said her intent was the opposite. But she's
5 entitled to testify to her intent. As for the other
6 statements, there is case law that contrition, promises of
7 compliance in the future go to mitigation, Your Honor, will
8 observe the witness -- the witnesses and determine the merits
9 of those expressions. But Gross Telecasting, WJPD and, and
10 other cases, and the witness is entitled to indicate that my
11 intention is to be law-abiding and we are not incorrigible
12 criminals and there is case law that, that entitles Your Honor
13 to, to view that evidence, weigh it and decide how that
14 factors in to penalty if you have found a violation.

15 JUDGE CHACHKIN: So, you're telling me this is being
16 offered solely for mitigation?

17 MR. TOPEL: The first sentence about her intent is,
18 is not.

19 JUDGE CHACHKIN: What is that being offered for?

20 MR. TOPEL: For intent, that, that we did not --
21 that she did not intent to violate any Commission rules.

22 JUDGE CHACHKIN: What's the Bureau's position?

23 MR. SCHONMAN: Your Honor, with the, with the
24 exception of the second sentence which begins, "If I have
25 acted improperly," I would object to that paragraph. I think

1 if Mrs. Duff were sitting here and testified to these matters,
2 these comments would be stricken.

3 MR. TOPEL: Well, I would only say, Your Honor, that
4 the case law has considered it.

5 MR. COHEN: I don't agree, Your Honor, that the case
6 law has considered it in the context that Mr. Topel puts it to
7 you. I don't believe that the case law supports the
8 proposition that testimony like this is relevant. This is a
9 conclusion -- that is, you can draw a conclusion from
10 observing the witness and listening to the testimony and, and
11 whatever, if you want to be lenient or you don't want to be
12 lenient or whatever. But I don't think that, that, that a
13 statement like this has any relevance in terms of mitigation.

14 JUDGE CHACHKIN: I certainly don't think that the
15 FCC should tell her what she should do to correct the error.
16 Presumably, the FCC does not act as a personal teacher for
17 every Commission licensee -- the rules and regulations and
18 Commission precedent establish what, what, what's proper and
19 what's not proper. And her statement here I think is rather
20 offensive, that the FCC should tell her what she did wrong. I
21 don't -- I'm not going to receive that portion.

22 MR. HONIG: Your Honor?

23 JUDGE CHACHKIN: That has nothing to do with
24 mitigation, responsibility of the FCC to tell her individually
25 what she did wrong. Yes?

1 MR. HONIG: I'd actually like that sentence to stay
2 in. The reason I'd like it to stay in is that I think it goes
3 to something else that's going to be critical and that is that
4 this was an ownership structure which I think all counsel
5 would agree was somewhat unusual. And to the extent that an
6 ownership structure is somewhat unusual, custom at least is
7 that you don't just file something with the Commission and
8 assume that you've given notice and then if they don't say
9 anything it's okay, you ask them, you file something, if
10 necessary ask them for, for, for a declaratory ruling or you
11 call someone. And if she's now putting this in for the first
12 time saying gee, tell me if I did something wrong, I want it
13 in as, as evidence that she didn't do it before.

14 MR. SCHONMAN: Your Honor, can I just clarify? My
15 colleagues have pointed out -- has pointed out to me that what
16 I, what I stated earlier may not have been clear. The Bureau
17 has no objection to the receipt of the first clause of the
18 second sentence; that is, "If I have acted improperly I want
19 to apologize to the FCC." The Bureau would put a period right
20 after the word "FCC," and the rest of the paragraph would be
21 stricken.

22 MR. TOPEL: Your Honor, could I request and move for
23 a modification of that and see how it flies? I think the, the
24 major point of contention initially is the clause asking the
25 FCC, that was, was not, not submitted with any glibness or

1 flipness, Your Honor. We do feel that this probably won't
2 happen until we get to findings and conclusions, but, but
3 that, that there were some unclarities in what, in what the
4 legal requirements were and it was meant in good faith. But
5 let's start with -- I'll, you know, not resist the striking of
6 the, the words beginning, "and ask the FCC," through the end
7 of that sentence. Then the next sentence which is her, her
8 statement of her, her attitude towards compliance with
9 Commission's rules and her pledge to come in to conformance
10 if, if a violation that she was unaware of is called to her
11 attention, that is a proper mitigating factor.

12 JUDGE CHACHKIN: The Bureau still object to that --
13 those sentences -- that sentence?

14 MR. SCHONMAN: Yes, we would still object.

15 JUDGE CHACHKIN: Your view is this is not proper
16 mitigation?

17 MR. SCHONMAN: That's correct.

18 MR. HONIG: And our view is that it should come in
19 because it's highly inculpatory.

20 MR. COHEN: I, I disagree with -- my client agrees
21 with the Bureau and disagrees with S.A.L.A.D. on this.

22 JUDGE CHACHKIN: All right. The sentence, "I know
23 that I'm not intentionally violated any FCC requirement," will
24 come in just solely for state of mind. The remainder of that
25 sentence will not be allowed in. She is not in a position to

1 testify to the state of mind of any other director. They will
2 have to testify on their own. The last sentence will be also
3 rejected as not bearing on mitigation.

4 MR. COHEN: What about the sentence, "If I have
5 acted improperly"?

6 JUDGE CHACHKIN: I will allow in the sentence, "If I
7 acted improperly. I want to apologize to the FCC." I will
8 allow that sentence.

9 MR. COHEN: "And ask that the FCC tell me what I
10 must do to -- "?

11 JUDGE CHACHKIN: Yeah, well, that portion has been
12 stricken.

13 MR. SCHONMAN: There's, there's a period after the
14 "FCC" -- after the word "FCC."

15 JUDGE CHACHKIN: That's correct. That's correct.

16 MR. COHEN: I see. And then the, and then the last
17 sentence, Your Honor?

18 JUDGE CHACHKIN: The last sentence has also been
19 rejected on the grounds it's not proper mitigation.

20 MR. COHEN: Yes, sir.

21 JUDGE CHACHKIN: Next objections?

22 MR. COHEN: Yes, sir. My -- I object, Your Honor,
23 to the, to the next paragraph on the grounds that it's
24 irrelevant, the most egregious kind of puffing and it's
25 conclusory and I'm prepared to, to, to address each sentence

1 consecutively if that's helpful. But it's, it's the most
2 self-serving kind of testimony, Your Honor, and, and I --

3 JUDGE CHACHKIN: Well, I'm going to strike it as
4 irrelevant to the transfer of control issue. Paragraph 19 is
5 rejected.

6 MR. COHEN: Did you say, Your Honor, that you're
7 going to take a short break today?

8 JUDGE CHACHKIN: Yes, I'm going to take it at this
9 time.

10 MR. SCHONMAN: Your Honor?

11 JUDGE CHACHKIN: Yes?

12 MR. SCHONMAN: What was your ruling on paragraph 19?

13 JUDGE CHACHKIN: I rejected the entire paragraph as
14 irrelevant to the question of control.

15 (Whereupon, off the record.)

16 (Whereupon, on the record.)

17 JUDGE CHACHKIN: On the record. I just spoke to Mr.
18 Meilhan of CNN and he informs me what they have in mind is
19 videotaping portions of the hearing including all the parts of
20 Mr. Crouch's testimony -- Rev. Crouch's testimony. He advises
21 me that they would have a tape recorder and video camera,
22 there would be no interviews and that he assures me that it
23 would not disturb the hearing in any way. And under those
24 circumstances, I've advised him I will permit him to do so and
25 advise him when Mr. Crouch is going to testify.

1 MR. TOPEL: Your Honor, may I make a motion? I
2 understand your ruling.

3 JUDGE CHACHKIN: Yes.

4 MR. TOPEL: Would you permit TBN to bring similar
5 equipment into the hearing room to have its own record of the
6 proceedings?

7 JUDGE CHACHKIN: Well, this is not to have a record
8 of the proceedings. This is to videotape certain portions.
9 Are you proposing to -- without any comment -- this is going
10 to be done without any comment, there will be no interviews,
11 just merely it will be a videotape recording equipment and
12 then that's it. But is that what you're proposing?

13 MR. TOPEL: Yes, we would do -- we would like to do
14 the same thing what CNN does for a broadcast network and we
15 would like the same privilege.

16 JUDGE CHACHKIN: Well, it's -- there is a difference
17 since you're the licensee in this case and -- yes, Mr. Honig?

18 MR. HONIG: I would like to ask for some
19 clarification as to, as to what -- as to whether what counsel
20 is proposing, his camera being brought in on behalf of the
21 trial team to tape the proceedings for use as part of trial
22 strategy or whether what is being proposed is journalists
23 coming in, tape recording it as a news event for the use of
24 the network for possible broadcast.

25 MR. TOPEL: The latter, Your Honor.

1 MR. HONIG: If it's the latter, I, I certainly would
2 have no objection.

3 MR. COHEN: Your Honor, could, could I ask with your
4 permission, the clarification that I would like to know is, is
5 Mr. Topel in a position to make the representation to Your
6 Honor that the -- that what will be taped will be indeed
7 broadcast on, on TBN without any editing?

8 MR. TOPEL: Well, has CNN made that representation?

9 JUDGE CHACHKIN: Wait a minute. But CNN, CNN is not
10 in the position that you are, obviously. CNN has no -- is not
11 involved in this proceeding, therefore any editing they do
12 will not be it seems to me to show one side or the other side
13 in a good light.

14 MR. COHEN: Exactly, Your Honor.

15 JUDGE CHACHKIN: Now, the question is, I think in
16 the case of the licensee I think that is a fair request --

17 MR. TOPEL: Well, Your Honor, that's --

18 JUDGE CHACHKIN: -- whether or not this will be done
19 in a fair and objective manner.

20 MR. COHEN: Exactly, Your Honor.

21 JUDGE CHACHKIN: If it's going to be done slanted in
22 favor of TBN, obviously it's not -- I'm not going to permit
23 it.

24 MR. TOPEL: Well, I don't believe we would slant. I
25 mean, we have no --

1 JUDGE CHACHKIN: Well --

2 MR. TOPEL: -- we have no intention to slant.

3 JUDGE CHACHKIN: -- if it's going to be edited then
4 I don't know how, how it will be treated. I mean, that, that
5 is a different situation here.

6 MR. TOPEL: Well, Your Honor, I would say that, that
7 your inference of what CNN will or won't do may or may not be
8 right. CNN has its own discretion and we're not at all
9 confident that it's -- particularly since it's only going to
10 be doing -- taping cross-examination of one witness, who
11 knows, who knows what they're going to do. That's part of our
12 concern. We don't think that anything that would be done over
13 the air as I understand what you were saying is going to be
14 used to try to influence this proceeding or, or your decision
15 in this proceeding.

16 MR. COHEN: Well, Your Honor, my, my concern remains
17 the same. Mr. Topel is certainly an honorable man and if he
18 makes a representation to you that the -- this is being done
19 for journalistic purposes and that it will be broadcast
20 unedited, then I'll accept that.

21 MR. TOPEL: Well, I don't --

22 MR. COHEN: But I haven't heard him making that
23 representation.

24 MR. SCHONMAN: Your Honor, can, can the Bureau speak
25 on the subject, please?

1 JUDGE CHACHKIN: Yes.

2 MR. SCHONMAN: I think we're getting into some very
3 serious First Amendment matters here. If Your Honor is going
4 to allow one news organization to, to cover this, this
5 hearing, then it ought to let -- it, it ought to allow any
6 number of news organizations to cover the, the hearing for
7 journalistic purposes and I, I --

8 MR. COHEN: TBN is not a news organization.

9 MR. SCHONMAN: -- and I don't think that, that
10 requiring one organization to edit or not edit is, is
11 something that this agency or Your Honor should be involved
12 with. I, I think anyone who covers this should be allowed to
13 edit the material as they see fit and that, that certainly is
14 their First Amendment right. To say that TBN can cover it but
15 they can't edit the material I think runs afoul of the First
16 Amendment.

17 MR. COHEN: Well, Your Honor, I think that the First
18 Amendment is, is all well and good, but we're not talking
19 about the First Amendment in the abstract here. We're talking
20 about the First Amendment as it, as it applies to TBN which is
21 a licensee and, and it is an applicant in this proceeding and
22 so its interests here are not as a journalist, it has, it has
23 a different fish to fry. So, I think it's, it's not helpful
24 to just talk in terms of blanket First Amendment questions.

25 JUDGE CHACHKIN: Also, do you propose to, to cover

1 the entire hearing?

2 MR. TOPEL: Yes, Your Honor, we would.

3 JUDGE CHACHKIN: And how would you propose to do so?

4 MR. TOPEL: In the, in the same manner -- we would
5 agree to whatever the proper guidelines are that are set for
6 CNN, TBN would, would proceed in exactly the same fashion.

7 JUDGE CHACHKIN: With no agreement on editing the
8 material?

9 MR. TOPEL: That's correct. I think Mr. Schonman
10 has, has stated the, the position correctly. There should be
11 no requirement --

12 JUDGE CHACHKIN: Well, I don't think Mr. Schonman
13 has, has -- I could understand a ruling there shouldn't be any
14 editing if we're dealing with, with organizations that don't
15 have any involvement in the proceeding and if they do so they
16 do so for their own reasons but without any attempt to, to
17 slant the news in favor of one party or another party. But
18 when you have an adversary in the proceeding, once they
19 videotape the hearing I think that presents a different
20 question other than whether it's going to be -- whether it's
21 fair to the other parties in the proceeding and I don't think
22 that's the situation that obtains when you have CNN or some
23 other news organization do it. And I don't know the answer,
24 frankly. I don't think we're dealing with the First Amendment
25 here. If, if TBN wanted to come into a proceeding in which it

1 wasn't involved in and taped that proceeding, obviously it
2 could do so under -- and you could -- I could understand your
3 argument that that's an analogous situation. But if someone
4 is an adversary in the proceeding and they want to videotape
5 the, the, the trial and then later on use it on a way to
6 assist them in, in their, in their trial tactics, to assist
7 them in, in their attempt to obtain a license, I don't see
8 that involves the First Amendment.

9 MR. SCHONMAN: Well, Your Honor, I don't see how
10 requiring TBN not to edit or, or placing restrictions on, on
11 what they can tape or not tape --

12 JUDGE CHACHKIN: Well, that's, that's something --

13 MR. SCHONMAN: I, I can't see how that will
14 influence Your Honor's decision or the, or the conduct of this
15 hearing. TBN may, may tape it I assume and then would, would,
16 would plan to rebroadcast it at some point on, on one of its
17 programs. I can't see how that would influence the, the
18 conduct or posture of this hearing.

19 JUDGE CHACHKIN: I, I don't know the answer to this
20 question. I don't, I don't know if anybody has ever been --
21 maybe there's precedent in this area. I don't know. Yes, Mr.
22 Honig?

23 MR. HONIG: Your Honor, I know when this has come up
24 in, in, in nonroutine trials in Florida. It's been handled by
25 having all of the news organizations, and they -- and, and

1 often including C-SPAN which isn't a news organization, to
2 agree on a pool camera so that there won't be but one camera
3 at a time and outside the courtroom the organizations can
4 agree on who would handle the pool coverage that day and, and
5 so on. Seems that the, the way to address this question of
6 how anyone other than the initial news organizations that made
7 the contact including possibly others as yet unknown should
8 handle this is to simply ask CNN if it would be kind enough to
9 make pool arrangements similar to those arranged elsewhere.
10 The only concern that I can imagine with, with Trinity being
11 part of such a pool would be if it were to use the tapes to
12 try to convince loyal viewers to do things which would be
13 inconsistent with the ex parte rules and I think that the way
14 to handle that is simply to ask counsels' assurance that they
15 won't be done other than if, if those two procedures are, are,
16 are invoked I think the Bureau is correct, if we're absolutely
17 consistent we can't go wrong as far the First Amendment is
18 concerned.

19 JUDGE CHACHKIN: Well, I don't know the answer.
20 I'll have to take this under advisement. There may -- what
21 ultimately may happen, and I suspect that that's what TBN
22 wishes, is that there won't be any taping at all by anybody.

23 MR. TOPEL: Well, Your Honor, we, we want to be
24 treated fairly and with all, with all respect --

25 JUDGE CHACHKIN: I, I understand.

1 MR. TOPEL: -- with all respect, you know, to you
2 and, and I understand you in good faith feel that CNN is going
3 to be objective and, and do a news event, they're still asking
4 only to tape a portion of a proceeding and if, if this is
5 going to become a newsworthy event, TBN as a national
6 broadcast network has, has the -- should have the same right
7 to cover the news. But, but --

8 JUDGE CHACHKIN: All I, all I would just point out
9 is that there's been no request up to now to -- for TBN to
10 cover the news, it only has come up in the context of --

11 MR. TOPEL: That's correct. In that regard you're,
12 you're correct, Your Honor. That's what precipitated thinking
13 about it.

14 JUDGE CHACHKIN: I understand that. It seems to me
15 the obvious answer may be there may be nobody taping it
16 because it may be so disruptive to have all kinds of cameras
17 around. I mean, one or two cameras may be something that
18 might not disrupt the proceeding, but if we have three or four
19 and more people in this small room that may pose a problem
20 logistically. So, I don't know how we'll handle it. I'll
21 just have to take it under advisement.

22 MR. HONIG: Your Honor, before we leave the subject,
23 I, I think there may be some guidance gained from the fact
24 that there is some history that the Commission has relating to
25 news organizations covering events in which their parent

1 companies have an interest. Going back to ABC's coverage, and
2 I'm not old enough to have been here so I'm speaking only
3 from older lawyers like -- for Mr. Cohen -- ITT oral argument
4 in 1967 which I think was the first one, they certainly had an
5 interest at stake and I recall that they had a camera there.
6 So, it's, it's not unprecedented what counsel's asking for,
7 but I think the way to handle it is the way it's always
8 handled in courts which is with a pool camera.

9 JUDGE CHACHKIN: Well, it's a little different than
10 oral argument, the actual trial and apparently what's, what's,
11 what's being proposed here is the entire hearing. While CNN
12 -- in other words, while it might be reasonable -- one could
13 reasonably argue it wouldn't be disruptive to have CNN here
14 for a few hours or perhaps one day. What's being proposed now
15 is the, is the coverage of the entire hearing and that's a
16 whole different proposition. So, apparently what TBN is
17 proposing is that they go way beyond what CNN is proposing.

18 MR. HONIG: Maybe the way to handle it is to simply
19 extend to any and all comers the same conditions and
20 limitations imposed on, on CNN.

21 JUDGE CHACHKIN: Well, I don't know if that will be
22 acceptable to Mr. Topel.

23 MR. TOPEL: It wouldn't, it wouldn't, Your Honor.
24 As I stated this morning, without, without belaboring, but in
25 our view Dr. Crouch is one witness in this case, an important